

NO. S279622
IN THE SUPREME COURT OF CALIFORNIA

HECTOR CASTELLANOS, JOSEPH DELGADO, SAORI OKAWA,
MICHAEL ROBINSON, SERVICE EMPLOYEES INTERNATIONAL UNION
CALIFORNIA STATE COUNCIL, and
SERVICE EMPLOYEES INTERNATIONAL UNION,
Plaintiffs-Respondents,

vs.

STATE OF CALIFORNIA, AND KATIE HAGEN, in her official capacity
as Director of the California Department of Industrial Relations.
Defendants-Appellants,

PROTECT APP-BASED DRIVERS AND SERVICES; DAVIS WHITE;
KEITH YANDELL.
Intervenors-Appellants,

First Appellate District, Division Four, Case No. A163655
Alameda County Superior Court No. RG21088725
The Honorable Frank Roesch, Presiding

APPLICATION TO FILE AMICI CURIAE BRIEF AND
AMICI CURIAE BRIEF IN SUPPORT OF
DEFENDANTS-APPELLANTS AND
INTERVENORS-APPELLANTS BY
COMMUNITIES-OF-COLOR ORGANIZATIONS

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("Communities-of-Color Organizations")

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APPLICATION FOR LEAVE TO FILE AMICUS BRIEF

Pursuant to California Rule of Court 8.520(f), amici curiae California Asian Pacific Chamber of Commerce, California Hispanic Chambers of Commerce, NAACP California Hawaii State Conference, National Action Network Los Angeles, National Action Network Sacramento Chapter Inc., and the National Diversity Coalition (collectively, “Communities-of-Color Organizations”) respectfully submit this application for leave to file the attached amicus brief in support of Defendants-Appellants State of California and Katie Hagen and Intervenors-Appellants Protect App-Based Drivers and Services, Davis White, and Keith Yandell. No party or counsel of record authored the proposed brief, in whole or in part, or contributed funds for the writing of the proposed brief. This application and brief are timely filed under California Rule of Court 8.520(f)(2) and (7).

The Court should grant this Application because the Communities-of-Color Organizations’ amici curiae brief will aid the Court’s consideration of issues addressed by Defendants-Appellants State of California and Katie Hagen and Intervenors-Appellants Protect App-Based Drivers and Services, Davis White, and Keith Yandell, in the above-captioned case, for the following reasons each of which is pertinent to this appeal.

First, the amici curiae brief explains why invalidating the People of the State of California’s policy choice in passing Proposition 22—a choice made by a wide margin of approximately three million votes—would not only disregard the

will of millions of Californian voters, but also would chill amici's participation in the ballot initiative process and weaken their ability to seek achievement of their policy objectives through direct democracy.

Second, the brief explains why Proposition 22 enables app-based platforms to provide valuable income-earning opportunities for workers of color, and to facilitate the provision of valuable transportation, food, and delivery services to communities of color. By contrast, invalidating Proposition 22—which Plaintiffs-Respondents seek—would harm workers and communities of color by depriving them of the income-earning opportunities and services facilitated by app-based platforms.

Accordingly, Communities-of-Color Organizations respectfully request that this Court grant this application and consider their amici curiae brief in connection with this matter.

STATEMENT OF AMICI CURIAE'S INTEREST

Proposed amici curiae (listed below) are California and national organizations dedicated to supporting people and workers of color, as well as minority-owned businesses and business owners. Amici have a strong interest in the outcome of this case, as their work supports the interest of workers and communities of color that stand to be impacted directly or indirectly by the requested injunction.

- **California Asian Pacific Chamber of Commerce:** The California Asian Pacific Chamber of Commerce (CalAsian Chamber) was founded in 2010 to give a voice to the over 600,000 Asian Pacific Islander (API) owned businesses in California.

Today, the CalAsian Chamber is the largest statewide ethnic chamber in California, with the mission to grow and empower the API business community throughout California.

- **California Hispanic Chambers of Commerce:**

Through its statewide network of over 90 Hispanic chambers and trade associations, the California Hispanic Chambers of Commerce (CHCC) represents the interest of the over 815,000 Hispanic businesses in California. As the nation's leading regional Hispanic and ethnic business organization, the CHCC for more than forty years has brought forth the issues and needs impacting Hispanic entrepreneurs and small businesses to the forefront of both California and national economic agendas. The CHCC promotes the economic growth and development of Hispanic entrepreneurs and California's Emerging Businesses.

- **NAACP California Hawaii State Conference:**

The NAACP's principal objective is to ensure the political, educational, social and economic equality of minority citizens of the United States and eliminate race prejudice. The NAACP seeks to remove all barriers of racial discrimination through democratic processes. Today, NAACP California Hawaii State Conference boasts 72 branches and youth unites mobilized across the state to help ensure racial justice and equality.

- **National Action Network Los Angeles:**

The National Action Network is one of the leading civil rights organizations in the nation founded by the Rev. Al Sharpton to promote a modern civil rights agenda that includes the fight for one standard of justice, decency and equal opportunities for all

people. National Action Network Los Angeles's purpose is to challenge and transform the criminal justice and economic development systems that disproportionately impact urban communities of color. National Action Network Los Angeles does that by providing advocacy, education, and empowerment services, along with opportunities for exposure in a variety of arenas that influence and create change on the state and local level.

- **National Action Network Sacramento Chapter Inc.:** The National Action Network is one of the leading civil rights organizations in the nation founded by the Rev. Al Sharpton. National Action Network Sacramento Chapter Inc. has worked diligently in advancing legislation supporting criminal justice reform, amending police use of force practices, ensuring equal voting rights, and school choice for all throughout California.

- **National Diversity Coalition:** National Diversity Coalition is a 501(c)(3) nonprofit organization focusing on financial equality and economic development and advocating for greater opportunity, economic empowerment, and financial equality for low-income, minority, and other disadvantaged and underserved communities. As we aggressively seek a brighter economic future for America's historically underserved populations, our goal is that through advocacy work and policy changes, more corporate entities will be held to a greater standard of social responsibility in helping to reduce income and wealth inequality.

AMICI CURIAE BRIEF

INTRODUCTION

In November 2020, the People of the State of California enacted Proposition 22, the “Protect App-Based Drivers and Services Act,” by a wide margin of almost three million votes. They did so through the ballot initiative process—a hallmark of, and testament to, California’s direct democracy.

After the election, however, the trial court thwarted the People’s resolution of this important policy issue and invalidated Proposition 22. In so doing, it struck a potentially devastating blow to the People’s right to direct democracy.

The Court of Appeal correctly rejected the trial court’s decision and largely upheld Proposition 22. But Plaintiffs-Respondents ask this Court to reverse the Court of Appeal and again invalidate Proposition 22. Reversing the Court of Appeal’s decision would not only negate the votes of millions of Californians. It also would substantially weaken a key means through which amici—which advocate to advance the interests of minority communities and workers—seek to achieve their policy objectives through the ballot box, directly with voters.

Reversing the Court of Appeal’s decision also would reduce critically needed income-earning opportunities to workers using app-based platforms. Under the independent contractor model guaranteed by Proposition 22—which gives workers the freedom to choose when, where, and how to work—app-based platforms

have provided valuable income-earning and entrepreneurial opportunities to workers of color. Invalidating Proposition 22, as Plaintiffs-Appellants request, would severely reduce those opportunities, harming many workers of color in the process. Invalidating Proposition 22 likewise would harm communities of color, by significantly reducing vital transportation, food, and delivery services facilitated by app-based platforms that serve these historically underserved communities.

Amici respectfully urge the Court to affirm the Court of Appeal's judgment, confirm the State's commitment to the initiative process, and restore the will of the People expressed through the passage of Proposition 22.

ARGUMENT

A. Affirming the Court of Appeal's Judgment Would Respect the Will of Millions of California Voters When They Resoundingly Enacted Proposition 22

1. Proposition 22 Reflects the Will of the People of California

Over three-and-a-half years ago, in November 2020, California voters approved Proposition 22 by a margin of nearly three million votes.¹ A significant share of these votes came from voters of color, as support for Proposition 22 was markedly

¹ Cal. Sec. of State, Statement of Vote, General Election (Nov. 3, 2020), at 14, <https://elections.cdn.sos.ca.gov/sov/2020-general/sov/complete-sov.pdf>.

higher in communities with greater Black and Hispanic populations.²

Proposition 22 sets forth a test under which app-based workers are classified as independent contractors, so long as the app-based platform companies through which they find work do not “set[] drivers’ hours, require[] acceptance of specific ride or delivery requests, or restrict[] working for other companies.”³ Proposition 22, for example, requires app-based platform companies “to pay 120 percent of the local minimum wage for each hour a driver spends driving, but not time spent waiting,” and, for those “who normally work more than 15 hours per week (not including waiting time),” to “help pay for health insurance” and “medical costs,” and “replace some lost income when a driver is injured while driving or waiting.”⁴ Proposition 22 also protects app-based workers by barring them from “working more than 12 hours in a 24-hour period” for a single company, “prohibits workplace discrimination,” and “requires that companies: (1) develop sexual harassment policies, (2) conduct criminal

² David Lewin and Mia Kim, *Analysis of Voter Support of Proposition 22 in California and Los Angeles County*, Report of the Berkeley Research Group (BRG), at 2, December 14, 2021, available at <https://progresschamber.org/wp-content/uploads/2022/01/BRG-Report-on-Proposition-22-12-14-21.pdf> (last visited March 29, 2024)

³ Official Voter Information Guide, California General Election (Nov. 3, 2020), at 56, <https://vig.cdn.sos.ca.gov/2020/general/pdf/complete-vig.pdf>.

⁴ *Id.*

background checks, and (3) mandate safety training for drivers.”⁵ By passing Proposition 22, millions of Californians—including many voters of color—decided that California app-based workers should be able to work as independent contractors and retain the freedom to choose when, where, and how they work, while ensuring those workers also have reasonable benefits and are kept safe while working.

Proposition 22 is not unique in establishing a test under which app-based workers may be treated as independent contractors. For example, the Legislature has determined that, for workers like “business service providers” (Cal. Labor Code § 2776), “data aggregators” (*id.* § 2782), and “commercial fishers” (*id.* § 2783), the California Supreme Court’s *Borello*⁶ test, which favors classification as independent contractors, applies, rather than the *Dynamex*⁷ test, which favors employee classification. The Legislature also has made other determinations about how certain groups of workers should be classified. Under the Labor Code, for example, physicians and surgeons are presumed to be independent contractors, *id.* § 2750.6, while cheerleaders for professional sports teams are classified as employees, *id.* § 2754. Like those statutes, Proposition 22 is an ordinary exercise of the legislative power—expressed through direct initiative via the

⁵ *Id.*

⁶ *S.G. Borello & Sons v. Dep’t of Industrial Rel.* (1989) 48 Cal.3d 341.

⁷ *Dynamex Operations W. v. Sup. Ct.* (2018) 4 Cal.5th 903.

ballot box, rather than through the Legislature.

In sum, Proposition 22 reflects the policy choices made by millions of voters—with significantly higher support in Black and Hispanic neighborhoods. Their collective choice should be respected, and the Court of Appeal’s judgment should be affirmed.

2. *The Ballot-Initiative Process Through Which Proposition 22 Was Passed Is an Important Mechanism of Direct Democracy that Should Be Protected*

Ballot initiatives, such as the one through which Proposition 22 was enacted, are a vital and longstanding hallmark of California’s constitutional system. Amici have been active participants in California’s direct democracy, having expressed their views on a wide variety of ballot initiatives over the years.

For example, the California Hispanic Chambers of Commerce have signed onto four ballot arguments since 2010 about various initiatives on very important social policies.⁸ One of

⁸ EXEMPTS APP-BASED TRANSPORTATION AND DELIVERY COMPANIES FROM PROVIDING EMPLOYEE BENEFITS TO CERTAIN DRIVERS. INITIATIVE STATUTE, California Proposition 22 (2020), at 50, *available at* https://repository.uchastings.edu/cgi/viewcontent.cgi?article=2388&context=ca_ballot_props; AUTO INSURANCE COMPANIES, PRICES BASED ON DRIVER’S HISTORY OF INSURANCE COVERAGE, California Proposition 33 (2012), at 35, *available at* <https://repository.uchastings.edu/cgi/viewcontent.cgi?article=2311>

those included a ballot argument in favor of a constitutional amendment that conferred the right to draw district boundaries for congressional districts to an appointed redistricting commission.⁹ Its argument highlighted that, under politician-led redistricting, a California Congressman carved 170,000 Latinos out of his district to ensure re-election, and that politicians' redistricting decisions diluted voters' voices to keep safe seats.¹⁰ Participating in the ballot initiative process was a key means through which the California Hispanic Chambers of Commerce expressed its views on that critically important political issue.

As another example, in 2012 the California Asian Pacific Chamber of Commerce signed a ballot argument opposing a \$1 billion tax increase which it contended “would result in the loss of

&context=ca_ballot_props; REDISTRICTING OF CONGRESSIONAL DISTRICTS, California Proposition 20 (2010), at 23, *available at* http://repository.uclaw.edu/ca_ballot_props/1341; REQUIRES THAT CERTAIN STATE AND LOCAL FEES BE APPROVED BY TWO-THIRDS VOTE. FEES INCLUDE THOSE THAT ADDRESS ADVERSE IMPACTS ON SOCIETY OR THE ENVIRONMENT CAUSED BY THE FEE-PAYER'S BUSINESS, California Proposition 26 (2010), at 61, *available at* https://repository.uclaw.edu/cgi/viewcontent.cgi?article=2340&context=ca_ballot_props.

⁹ REDISTRICTING OF CONGRESSIONAL DISTRICTS, California Proposition 20 (2010), at 23, *available at* https://repository.uclaw.edu/cgi/viewcontent.cgi?article=2334&context=ca_ballot_props.

¹⁰ *Id.*

thousands of middle class jobs.”¹¹ And since 2010, NAACP California Hawaii State Conference has signed a host of ballot arguments about a wide-ranging set of issues, including, as but a few examples, proposed amendments to the California Privacy Rights Act to better protect consumers, rent control, and legalized marijuana.¹²

These organizations—as well as a host of other parties interested in the significant policy issues decided in California through the initiative process—expend significant resources and political capital in support or in opposition to, ballot initiatives. They do so because they are committed to the democratic process in which they express to voters their views on critically important issues.

Amici’s participation in these ballot initiatives would be undermined by invalidating Proposition 22. That would directly and significantly impair the People’s power to legislate through the ballot initiative process. And it would chill amici’s continued

¹¹ TAX TREATMENT FOR MULTISTATE BUSINESSES, CLEAN ENERGY AND ENERGY EFFICIENCY FUNDING, California Proposition 39 (2013), at 73, *available at* https://repository.uclawsf.edu/cgi/viewcontent.cgi?article=2317&context=ca_ballot_props.

¹² AMENDS CONSUMER PRIVACY LAWS. INITIATIVE STATUTE, California Proposition 24 (2020), at 70; EXPANDS LOCAL GOVERNMENTS’ AUTHORITY TO ENACT RENT CONTROL ON RESIDENTIAL PROPERTY. INITIATIVE STATUTE, California Proposition 21 (2020), at 54; LEGALIZES MARIJUANA UNDER CALIFORNIA BUT NOT FEDERAL LAW, California Proposition 19 (2010), at 17.

involvement as active and vocal participants in the direct initiative process, because it would substantially weaken one of the key means through which amici—which advocate for workers and communities of color—seek to achieve their policy objectives directly with voters through the initiative process, rather than through the Legislature. This Court should affirm the Court of Appeal’s judgment and reinforce the integrity of the ballot-initiative process.

B. Under Proposition 22, App-Based Platforms Have Facilitated Income-Earning Opportunities to Workers of Color, and Transportation, Food, and Delivery Services to Historically Underserved Communities of Color

It is unsurprising that California voters overwhelmingly approved Proposition 22 to preserve the independent-contractor model for app-based workers. App-based platforms have provided valuable income-earning opportunities for California workers who prefer the flexibility and lifestyle offered by that work arrangement, and have facilitated the provision of transportation, food, and delivery services to communities of color that have been historically underserved. These benefits all stand to be dramatically reduced if Proposition 22 is invalidated.

1. *Proposition 22 Ensures Workers on App-Based Platforms Have a Flexible Alternative to the Traditional Employment Model*

The gig economy¹³—of which app-based platforms are a part—has become a significant part of the general American economy. It includes a variety of highly skilled services such as “computer programming” and “business consulting,” as well as other services like “dog walking,” “ridesharing,” “selling goods,” and “other activities.”¹⁴ In 2019, “57 million Americans” performed independent freelance work, contributing nearly “one trillion dollars” of income to the U.S. economy.¹⁵

Freelancing gives workers the ability to choose when and where to work. Freelancing also allows people to “turn to gig work to deal with financial hardships” or “to meet basic needs . . . to pay bills.”¹⁶ In addition, the gig economy offers workers an

¹³ Although some people colloquially use “gig economy” as limited to those who use a digital “platform” like a “ridesharing” or “handyman app . . . to get work,” other “freelance and independent workers consider themselves part of the gig economy.” See, e.g., Katy Macek, *The Gig Economy And What’s In It For Women*, BRAVA MAGAZINE, Sept. 5, 2019, <https://bravamagazine.com/gig-economy-and-women/>.

¹⁴ Press Release, *Sixth annual “Freelancing in America” study finds that more people than ever see freelancing as a long-term career path*, Upwork & Freelancers Union, Oct. 3, 2019, <https://www.upwork.com/press/2019/10/03/freelancing-in-america-2019/>.

¹⁵ *Id.*

¹⁶ Gig Economy Data Hub, *What are the experiences of gig workers?*, <https://www.gigeconomydata.org/basics/what-are-experiences-gig-workers> (last visited March 19, 2024).

attractive way to earn supplemental income, such as in retirement or while enrolled in school. Approximately 80 percent of all ride-share drivers work less than 20 hours per week, and approximately 70 percent work less than 20 weeks per year.¹⁷

In addition, freelance work is important to caregivers, including caregivers of color, as it allows them flexibility to earn money when they are not providing child- or elder-care.

According to a 2018 survey of women who work in the gig economy, more than half of those with children only under the age of five said they were more likely to do gigs to be able to increase the amount of time to spend with their children.¹⁸ Gig economy services also have proved to be a valuable resource empowering older adults to achieve personal independence, whether by working beyond retirement age for supplemental income or by using gig economy services (such as rideshares or delivery services) to address mobility challenges.

¹⁷ David Lewin, William Hamm, and Mia Kim, *Analysis of Driver Job Losses if Gig Economy Companies Must Re-Classify Drivers as Employees Rather than Independent Contractors*, Report of the Berkeley Research Group (BRG), at 1, May 14, 2020, available at https://media.thinkbrg.com/wp-content/uploads/2020/06/01111225/BRG-REPORT-JOB-LOSS-SUMMARY-MAY-14-2020_FINAL_website.pdf (last visited March 19, 2024).

¹⁸ See Fran Maier, Lynn Perkins and Anna Zomosa, *Can't Stop, Won't Stop Her Side Hustle: Women in the Gig Economy 2018*, at 10, Sept. 5, 2018, https://blog.urbansitter.com/wp-content/uploads/2018/09/Cant-Stop-Wont-Stop-Her-Side-Hustle_Women-in-the-Gig-Economy-2018.pdf.

Unsurprisingly, 84 percent of freelance workers report that they are “living their preferred lifestyle,” as compared to 54 percent of traditional employees.¹⁹ Similarly, 75 percent of freelancers say they prefer freelancing over a full-time job as a traditional employee.²⁰

Given these benefits and the support from freelance workers, it is unsurprising that Proposition 22 passed by such a wide margin.

2. *App-Based Platforms Provide Valuable Income-Earning and Entrepreneurial Opportunities to Workers of Color*

Proposition 22 benefits many workers of color who find income-earning opportunities in the gig economy. According to an August 2021 Pew Research Center survey, 16 percent of U.S. adults report have earned money through an online gig platform.²¹ Among those workers, 30 percent of Hispanic adults have earned money through an online gig platform, 20 percent of

¹⁹ See Damjan Jugovic Spajic, *The Future of Employment—30 Telling Gig Economy Statistics*, SMALLBIZGENIUS, Jan. 11, 2021, <https://www.smallbizgenius.net/by-the-numbers/gig-economy-statistics/#gref>.

²⁰ Philip Garrity, *We Polled 573 Freelancers About AB5. They're Not Happy*, THE FREELANCE CREATIVE, BY CONTENTLY, Jan. 30, 2020, <https://contently.net/2020/01/30/resources/we-polled-573-freelancers-about-ab5-theyre-not-happy/>.

²¹ Risa Gelles-Watnick & Monica Anderson, *Racial and ethnic differences stand out in the U.S. gig workforce*, (Dec. 15, 2021), <https://www.pewresearch.org/fact-tank/2021/12/15/racial-and-ethnic-differences-stand-out-in-the-u-s-gig-workforce/> (last visited March 19, 2024).

Black adults, and 19 percent of Asian adults.²² Thus, workers of color are more likely to have earned money in the gig economy than their White counterparts.

App-based workers of color express high satisfaction with their work arrangement. According to the Pew Research Group survey noted above, **81 percent** of non-White adults with gig platform experience rate their experience positively—a rate five percent *higher* than for White adults.²³

In addition to providing highly valued income-earning opportunities, the gig economy also has provided entrepreneurial opportunities for those historically underrepresented among that group. For example, in 2017, an African American woman founded Kiddie Commute, “a full-service transportation company” for children in San Diego.²⁴ As of July 2019, Kiddie Commute was “the only Black woman-owned transportation company in the state,” offering gig economy workers the opportunity to earn income as independent contractors.²⁵ Another study demonstrates that the introduction of gig economy opportunities in a region corresponds with an increase in new business registrations, particularly where the percentage

²² *Id.*

²³ *Id.*

²⁴ *Introducing the First Ever Black Woman-Owned Rideshare Service for Kids*, BLACKNEWS.COM, Jul. 29, 2019, <https://www.blacknews.com/news/kiddie-commute-first-ever-black-woman-owned-rideshare-service-for-kids/>.

²⁵ *Id.*

of Hispanic adults is higher.²⁶ The study indicates the gig economy encourages entrepreneurship and small businesses, by mitigating the financial risk traditionally associated with starting a business.

App-based platforms provide valuable income-earning and entrepreneurial opportunities to workers of color. By passing Proposition 22, the People of California endorsed a work model that helps ensure the continued provision of these benefits to workers of color.²⁷

Reversing the Court of Appeal and invalidating Proposition 22, by contrast, would put those benefits at grave risk. The one-size-fits-all employee model Plaintiffs-Respondents advocate likely would *eliminate* work opportunities for many workers of color, as app-based platforms dramatically reduce the number of workers they allow to use their platform. Indeed, a recent report estimates that the re-classification of ride-share app drivers

²⁶ John M. Barrios et al., *Launching with a Parachute: The Gig Economy and New Business Formation*, 144 J. OF FIN. ECON. 22, 22-43 (2022).

²⁷ App-based platforms also offer relatively safe occupations. According to data from the U.S. Bureau of Labor, in 2016-17 “[t]axi drivers and chauffeurs (include[ing] peer-to-peer rideshare drivers” had the second lowest rate of fatal occupational injuries for independent workers. U.S. Bureau of Labor Statistics Beyond the Numbers Publication, Fatal Occupational Injuries to Indep. Workers, Vol. 8, No. 10 (Aug. 2019), <https://www.bls.gov/opub/btn/volume-8/fatal-occupational-injuries-to-independent-workers.htm> (last visited March 19, 2024).

would result in a loss of *93.2 percent* of driver jobs—a reduction of approximately 1.4 million workers to only 100,000.²⁸ Such a drastic reduction would cause significant harm to workers of color and the communities they serve.

3. *App-Based Platforms Facilitate the Provision of Valuable Services to Historically Underserved Communities of Color*

App-based platforms have facilitated the provision of transportation, food, and delivery services to communities of color that have long been underserved by traditional companies.

Lyft, for example, estimates that 43 percent of all Lyft rides start or end in a low-income neighborhood.²⁹ And according to a 2018 academic study, Uber and Lyft facilitate access to transportation in communities of color in a manner less discriminatory than those provided by traditional taxicab companies.³⁰

²⁸ David Lewin, William Hamm, and Mia Kim, *Analysis of Driver Job Losses if Gig Economy Companies Must Re-Classify Drivers as Employees Rather than Independent Contractors (Updated 9/12/23)*, Report of the Berkeley Research Group (BRG), at 6, September 12, 2023, *available at* https://protectdriversandservices.com/wp-content/uploads/2023/11/BRG-Mini-Report-Update_October-2023_FINAL.pdf (last visited March 29, 2024)

²⁹ Lyft 2023 Economic Impact Report, https://s27.q4cdn.com/263799617/files/doc_downloads/esg/2023/Lyft-Economic-Impact-Report-2023-1.pdf.

³⁰ David Z. Morris, *Ride-Hailing Apps May Benefit Poor and Minority Communities The Most, Study Suggests*, FORTUNE (June 30, 2018), <https://fortune.com/2018/06/30/uber-lyft-poor-minority-communities/>.

That study confirmed that drivers using Lyft’s and Uber’s platforms—contrary to traditional taxicab companies—serve virtually the entire area of Los Angeles County, and that Lyft facilitated more trips per capita in low-income neighborhoods than in other neighborhoods.³¹ The study also showed that while African American passengers wait as much as *fifteen* minutes longer than white passengers for taxicab services,³² African American rideshare passengers waited only *two* minutes longer than their non-Black counterparts.³³ The study also found “no substantial difference in wait times between white, Asian, and Hispanic riders” using these “ride-hailing apps.”³⁴

Aside from wait times, African Americans also experienced fewer cancellations for rides with Lyft and Uber than with traditional taxicab companies operating in the city.³⁵ Because minorities (and those of lower income) are less likely to own a car and make more rideshare trips per capita than those in middle-

³¹ *Id.*; Anne Brown, *Redefining Car Access: Ride-Hail Travel and Use in Los Angeles*, JOURNAL OF THE AMERICAN PLANNING ASSOCIATION 85:2, 83-95 (2019), <https://www.tandfonline.com/doi/full/10.1080/01944363.2019.1603761>.

³² Morris, *supra* note 30.

³³ *Id.*

³⁴ *Id.*

³⁵ Marco della Cava, *Blacks face longer wait times on Uber, Lyft than other races – worse for taxis, study says*, USA TODAY (June 27, 2018), <https://www.usatoday.com/story/tech/2018/06/27/blacks-face-longer-wait-times-uber-lyft-than-other-races-and-its-worse-taxis/735578002/>.

and high-income areas, the transportation services provided by Lyft and Uber are particularly valuable to communities of color.³⁶

Rideshare services also facilitate valuable transportation services to the elderly. For example, an academic study conducted in San Francisco exploring transportation barriers for older adults with chronic disease showed that rideshare services enhanced their ability to attend medical appointments, entertainment options, social visits, and fitness classes, and to handle errands.³⁷ According to the study, using rideshare services also was associated with improved quality of daily life for 90 percent of participants in the study, and that 66 percent of participants reported “increased social visits” and reduced isolation.³⁸ Rideshare services have improved the daily lives of the elderly and expanded access in their communities.

App-based platforms also are providing access to healthy, fresh food in areas historically underserved by supermarkets. For example, Instacart’s 2015 expansion into historically underserved neighborhoods in the City of San Francisco helped to ensure that “[e]veryone—no matter what neighborhood or part of the City they live in—[had] the ability to access healthy and fresh

³⁶ Morris, *supra* note 30.

³⁷ Leslie Saxon, M.D., Rebecca Ebert, and Mona Sobhani, Ph.D., *Health Impacts of Unlimited Access to Networked Transportation in Older Adults*, THE JOURNAL OF MHEALTH (Aug. 13, 2019), <https://thejournalofmhealth.com/health-impacts-of-unlimited-access-to-networked-transportation-in-older-adults/>.

³⁸ *Id.*

foods.”³⁹ Instacart’s entry into local markets also increased sales for retailers, and was associated with an increase of four percent in employment by retail grocery stores.⁴⁰

In sum, app-based platforms have facilitated the provision of essential services to communities of color which have historically been underserved in this regard. The provision of these services rests upon the platforms’ ability to facilitate income-earning opportunities to workers who enjoy the independent contractor model. Those services would be imperiled if such workers were forced to be treated as employees. And in turn, invalidating Proposition 22 would reduce services provided by those workers in communities of color, unnecessarily and significantly harming them in the process.

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³⁹ Supervisor Malia Cohen, September 2015 Newsletter, https://myemail.constantcontact.com/Supervisor-Cohen--September-2015-Newsletter.html?soid=1109991760435&aid=H7HUo_7bg5Y (last visited May 31, 2022).

⁴⁰ Robert Kulick, Ph.D., *The Economic Impact of Instacart on the Retail Grocery Industry: Evidence from Four States*, NERA Economic Consulting 3, Feb. 2020. https://www.nera.com/content/dam/nera/publications/2020/Instacart_White_Paper_FINAL_February_2020.pdf.

CONCLUSION

For the foregoing reasons, as well as those stated in Defendants-Appellants' and Intervenor-Appellants' Answer Briefs, the Court should affirm the judgment of the Court of Appeal.

Respectfully submitted,

Dated: April 3, 2024

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Lower Court Case Number: **A163655**

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